

AMENDED IN ASSEMBLY APRIL 23, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 698

Introduced by Assembly Member Lieber
(Coauthors: Assembly Members Jackson and Pavley)

February 19, 2003

An act to add Chapter 6.93 (commencing with Section 25430) to Division 20 of the Health and Safety Code, relating to hazardous substances.

LEGISLATIVE COUNSEL'S DIGEST

AB 698, as amended, Lieber. PCE: claims: liability.

Existing law requires hazardous waste facilities to operate under hazardous waste facilities permits issued by the Department of Toxic Substances Control. The department is required to adopt regulations for series A, B, and C standardized permits for offsite non-RCRA hazardous waste treatment or storage facilities. Existing law provides that an offsite facility treating solvents is eligible for a standardized permit if, among other things, the facility exclusively treats solvent wastes and the wastes that the facility treats are only the types of solvents generated from dry cleaning operations.

This bill would enact the California PCE Environmental Cost Recovery Act and would require the owner or operator of a ~~PCE-use~~ *dry cleaning facility or abandoned dry cleaning* facility that is currently conducting or intends to conduct dry cleaning operations, and each wholesale distributor of PCE, to register *the facility* with the board, and to pay an annual registration fee *of \$1,500*. The bill would authorize a

current or prior owner or operator of an abandoned dry cleaning facility or property to register the facility or property site and pay a fee.

The bill would also require each person ~~who~~ *or business that* sells PCE in this state to pay a fee of \$10 for each gallon of PCE purchased by a dry cleaning facility. The bill would authorize the board, on and after January 1, 2006, to annually adjust the registration fees and sales to ensure viability of the fund. The bill would prohibit ~~any~~ *a* person, after January 1, 2005, from selling or transferring any dry cleaning solvent to ~~any~~ *a* person owning or operating a dry cleaning facility unless the owner or operator of the dry cleaning facility has a certificate of registration.

The bill would require all registration fees and PCE sales fees to be deposited in the PCE (Tetrachloroethelyne) Cost Recovery Fund which this bill would create in the State Treasury. The bill would also require all money appropriated by the Legislature, corrective action costs recovered by the board, gifts, grants, and donations, federal funds and interest earned be deposited in the fund.

The bill would authorize the board to expend the money in the PCE Cost Recovery Fund, upon appropriation by the Legislature, for taking specified actions with respect to a PCE release from a ~~PCE-use dry cleaning facility or abandoned dry cleaning facility~~ or wholesale distribution facility, including the reasonable and necessary costs ~~of corrective action~~ *expended by the board with respect to a PCE release*, enforcement activities, and for administrative expenses related to carrying out the act. The board would also be authorized to expend the money in the fund to pay claims to potentially eligible parties for the reimbursement of necessary corrective action costs incurred by the claimant with regard to a PCE release.

The bill would provide that an owner or operator of a dry cleaning facility or wholesale distribution facility from which there is a PCE release or threatened release is liable for the full costs of any required corrective action or replacement costs, or any corrective action order, directive, notification or approval order issued pursuant to the Porter-Cologne Water Quality Control Act, with regard to that PCE release. ~~The bill would authorize the board to recover these costs from the owner or operator in a civil action and would provide that the standard of liability for any costs of corrective action recoverable pursuant to this bill is strict liability.~~

The bill would authorize a potentially eligible party, as defined, to file a claim with the board for specified reimbursement corrective



action costs and water supply replacement costs with regard to a PCE release *at a dry cleaning facility*. The bill would require the board to review and approve or deny an application for a claim, as specified, and to adopt and annually revise a priority ranking list for awarding claims.

The bill *would* require the board to adopt regulations to implement the act and would prohibit the Office of Administrative Law from repealing any emergency regulations filed with the Office of Administrative Law on or before January 1, 2005.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 6.93 (commencing with Section
2 25430) is added to Division 20 of the Health and Safety Code, to
3 read:

4
5 CHAPTER 6.93. CALIFORNIA PCE ENVIRONMENTAL COST
6 RECOVERY ACT

7
8 Article 1. Title and Legislative Intent

9
10 25430. (a) This chapter shall be known and may be cited as
11 the “California PCE Environmental Cost Recovery Act.”

12 (b) The Legislature hereby finds and declares all of the
13 following:

14 (1) In order to help ensure an efficient PCE Cost Recovery
15 Fund to provide response for releases of PCE *related to dry*
16 *cleaning operations*, including spills and disposal that pose a threat
17 to the public health or the environment and that provides for the
18 rapid distribution of cleanup funds that will assist the state’s
19 recovery, it is in the best interest of the public that the State Water
20 Resources Control Board devote maximum effort to the expedited
21 processing and payment of all claims filed pursuant to Section
22 25465.

23 (2) It is estimated that approximately ____s of former and
24 existing ~~PCE-use~~ *dry cleaning* facilities exist in the state.

25 (3) Although the exact extent of the problem is unknown, it is
26 thought that a significant number of ~~PCE-use~~ *dry cleaning*
27 facilities in the state have released PCE contamination that poses

1 a threat to the environment and human health and safety. Over 900
2 public drinking water wells and dozens of communities have been
3 affected by PCE releases from dry cleaning facilities and possibly
4 other PCE use facilities. Property transactions and land
5 redevelopment have been significantly hampered by discovery of
6 PCE contamination at current and abandoned ~~PCE-use dry~~
7 *cleaning* facilities. Emergency funds and general funds have been
8 insufficient to pay for water replacement costs in the hardest hit
9 communities.

10 (4) In recent years, owners or operators of ~~PCE-use existing or~~
11 *abandoned dry cleaning* facilities and contaminated properties
12 have been unable to obtain sufficient financial resources to pay for
13 corrective action or replacement of drinking water sources.

14 (5) There are long-term threats to public health and water
15 quality if a comprehensive, uniform, and efficient funding
16 program is not established to assist in meeting corrective action
17 requirements.

18 (6) It is in the best interest of the health and safety of the people
19 of the state to establish a fund to pay for corrective action and
20 drinking water replacement costs if insurance coverage or other
21 financial means are not available.

22 (7) An efficient program of establishing corrective action
23 reimbursement funds should encourage corrective action to be
24 taken by the owner or operator of a contaminated ~~PCE-use dry~~
25 *cleaning facility or abandoned dry cleaning* facility.

26 (8) It is in the public interest for the state to provide financial
27 assistance to small businesses that have limited financial
28 resources, to ensure the adequate protection of groundwater and
29 public health.

30 (c) Nothing in this chapter shall be construed as waiving any
31 immunity provided the state or its departments and agencies by the
32 United States Constitution.

33 Article 2. Definitions

34
35 25431. Unless the context indicates otherwise, the definitions
36 specified in this article govern the construction of this chapter.

37 25431.5. “Abandoned dry cleaning facility” means any real
38 property premises or individual leasehold space on which a dry
39 cleaning facility formerly operated.
40

1 25432. “Claim” and “application” means an application to
2 the board for the reimbursement of the costs of taking corrective
3 action for a PCE release *from an existing or abandoned dry*
4 *cleaning facility*.

5 25432.1. “Claimant” means a potential eligible party who
6 has a claim approved by the board.

7 25432.5. “Corrective action” has the same meaning as
8 defined in Section 25299.14, but only with respect to a release of
9 PCE.

10 ~~25433. “Dry cleaning facility” means any commercial~~

11 25433. “Dry cleaning facility or abandoned dry cleaning
12 facility” means a current or abandoned commercial facility
13 located in this state that is *or was* engaged in onsite dry cleaning
14 operations, other than one of the following:

15 (a) A coin-operated dry cleaning operation.

16 (b) A facility located on a United States military base or owned
17 by the United States, or any state or local agency.

18 (c) A commercial uniform service and/or linen supply facility.

19 25433.5. “Dry cleaning operations” means cleaning of
20 apparel and household fabrics, using one or more dry cleaning
21 solvents, including, but not limited to, those businesses described
22 in Standard Industrial Classification (SIC) Code No. 7216.

23 25434. “Dry cleaning solvent” or “solvent” means any
24 nonaqueous solvent or product used, or intended for use, in the
25 cleaning of garments and other fabrics at a dry cleaning facility,
26 including, but not limited to, all of the following:

27 (a) Dense nonaqueous solvents, including, but limited to, such
28 chlorinated solvents as PCE.

29 (b) Light nonaqueous solvents, including, but not limited to,
30 such petroleum-based solvents as Stoddard Solvent.

31 (c) The products into which all the solvents or products
32 specified in subdivisions (a) or (b) degrade.

33 25434.5. “Federal act” means the Comprehensive
34 Environmental Response, Compensation, and Liability Act of
35 1980, as amended (42 U.S.C. Sec. 9601 et seq.).

36 25435. “Fund” means the PCE (Tetrachloroethylene) Cost
37 Recovery Fund created pursuant to Section 25440.

38 ~~25435.1. “Impacted third party” means a person who has~~
39 ~~suffered bodily injury or property damage arising from a PCE~~
40 ~~release.~~

1 25435.5. "Operator" means any person responsible for the
2 operation of a dry cleaning facility or in-state wholesale
3 distribution facility or that has an ownership interest in a dry
4 cleaning operation or wholesale distributor.

5 25436. "Operation," with respect to a dry cleaning facility,
6 means maintaining or management.

7 25436.5. "Owner," with respect to a dry cleaning facility,
8 means to own part or all of the real property of the facility.

9 25437. "PCE" means tetrachloroethelyne or
10 perchloroethelyne.

11 ~~25437.5. "PCE use facility" means a current or abandoned~~
12 ~~dry cleaning facility.~~

13 25438. "Person" means an individual, trust, firm, joint stock
14 company, business concern, corporation, including, but not
15 limited to, a government corporation, partnership, limited liability
16 company, and association. "Person" also includes any city,
17 county, city and county, district, commission, the state or any
18 political subdivision thereof, any interstate body, and the United
19 States and its agencies and instrumentalities, to the extent
20 permitted by law.

21 25438.5. "Potentially eligible party" or "party" means ~~any~~
22 *either* of the following:

23 (a) The owner or operator of an active dry cleaning facility,
24 abandoned dry cleaning facility, or wholesale distribution facility.

25 (b) The prior owner or operator of an abandoned dry cleaning
26 facility.

27 ~~(c) An impacted third party.~~

28 25439. "Release" means any spilling, leaking, pumping,
29 pouring, emitting, emptying, discharging, injecting, escaping,
30 leaching, dumping, or disposing of PCE into the environment.

31 25439.1. "Site" means any area, location, or facility where
32 PCE has been released into the environment.

33 25439.2. "Wholesale distributor" means a person or
34 company whose primary business is selling dry cleaning solvents
35 and supplies to in-state or out-of-state dry cleaning facilities. For
36 purposes of this section, "primary business," means that the
37 percentage of the person's or company's gross receipts from the
38 sale of dry cleaning solvents and supplies to the dry cleaning
39 facilities equals or exceeds 20 percent of total gross receipts.

1 25439.6. “Wholesale distribution facility” means a facility
2 or location where a wholesale distributor’s operations are located
3 and that is used for the storage or handling of dry cleaning solvents
4 and supplies.

5 25439.7. For purposes of this chapter, “board,” “regional
6 board,” and “local agency” have the same meanings as defined
7 in Section 25281. Any other term used in this chapter that is not
8 defined by this article has the same meaning as defined in Section
9 25281.

10
11 Article 3. PCE (Tetrachloroethelyne) Cost Recovery Fund
12

13 25440. (a) The PCE (Tetrachloroethelyne) Cost Recovery
14 Fund is hereby established in the State Treasury, and the money in
15 the fund may be expended by the board, upon appropriation by the
16 Legislature, for the purposes specified in subdivision (c). The
17 Legislature may appropriate the money in the fund for expenditure
18 by the board, without regard to fiscal years, for taking prompt
19 action in response to any unauthorized release of *PCE that has*
20 *impacted, or reasonably will impact, the waters of the state*, for
21 purposes of ~~paragraph (2) of~~ subdivision (c).

22 (b) All of the following amounts shall be deposited in the PCE
23 Cost Recovery Fund:

24 (1) All money recovered by the board pursuant to Section 25460
25 ~~from a liable owner or operator~~ *from an owner or operator of a dry*
26 *cleaning facility or abandoned dry cleaning facility*.

27 (2) Fees collected pursuant to Article 4 (commencing with
28 Section 25450).

29 (3) Any appropriations made by the Legislature.

30 (4) Gifts, grants, and donations intended for deposit in the fund.

31 (5) Any federal funds made available under similar federal
32 legislation, or any other federal program.

33 (6) Notwithstanding Section 16475 of the Government Code,
34 all interest earned upon any money deposited in the PCE Cost
35 Recovery Fund.

36 (c) The board may expend the money in the PCE
37 (Tetrachloroethelyne) Cost Recovery Fund for all of the following
38 purposes:

39 (1) The reasonable and necessary costs ~~of corrective action~~
40 *expended by the board* with respect to a PCE release from a PCE

1 ~~use dry cleaning facility or abandoned dry cleaning facility or~~
2 wholesale distribution facility, including all of the following:

3 (A) Enforcement activities.

4 (B) Corrective action oversight.

5 (C) Cost recovery.

6 ~~(D) Relocation of residents and provision of water supplies.~~

7 (D) *Provision of replacement water supplies.*

8 (E) Exposure assessments.

9 (2) For administrative expenses related to carrying out the
10 activities specified in paragraph (1) and for implementing this
11 chapter.

12 (3) For transfer to the State Board of Equalization for
13 administrative costs in collecting the fee imposed by Article 4
14 (commencing with Section 25450).

15 (4) To pay claims pursuant to Section 25465 for all of the
16 following:

17 (A) Reimbursement of necessary corrective action costs
18 incurred by the claimant that are required by the regional board or
19 local agency to protect water resources and public health and
20 safety

21 (B) Any water supply replacement costs that are required by a
22 California regional water quality control board.

23 (d) The board shall oversee expenditures required to provide
24 administrative support and maximize the funds available for
25 corrective action and minimize the board's administrative
26 expenditures.

27 Article 4. Fees and Payments to the Fund

28 25450. The Legislature hereby declares that the fees imposed
29 by this article would not result in the imposition of a tax within the
30 meaning Article XIII A of the California Constitution, because the
31 amount and nature of the fees have a fair and reasonable
32 relationship to the adverse environmental burdens imposed by the
33 sale and use of PCE and there is a sufficient nexus between the fees
34 imposed and the use of those fees to support the funding of
35 corrective action measures, including payment of claims for costs
36 incurred to take corrective action, to releases of PCE.

37 25451. (a) On or before January 1, 2005, and on or before
38 each January 1 thereafter, the owner or operator of a ~~PCE-use dry~~
39

cleaning facility or abandoned dry cleaning facility that is currently conducting, or intends to conduct for all or part of the year, dry cleaning operations shall register the facility with the board.

(b) A current or prior owner or operator of an abandoned dry cleaning facility or property may register the facility or property with the board and pay a fee pursuant to ~~this section~~ *subdivision (c)*.

(c) The owner or operator of a ~~PCE-use dry cleaning facility or abandoned dry cleaning facility~~ subject to subdivision (a) shall pay the board an annual registration fee *of one thousand five hundred dollars (\$1,500)* in accordance with the fee schedule adopted by the board.

(d) The board shall adopt regulations establishing a fee schedule pursuant to this article in the amount necessary to carry out this article with regard to ~~PCE-use dry cleaning facilities~~.

25452. On and after January 1, 2005, each wholesale distributor shall register with the board and pay an annual registration fee of five thousand five hundred dollars (\$5,500) for each wholesale distribution facility in the state.

25453. (a) Each person *or business* who sells PCE in this state, *regardless of the state or country of origin*, shall pay a fee of ten dollars (\$10) for each gallon of PCE purchased by a dry cleaning facility.

(b) A person who sells PCE subject to the fee shall collect and forward the fee collected to the board on a quarterly schedule established by the State Board of Equalization.

25454. All registration fees and PCE sales fees collected pursuant to this article shall be deposited in the PCE Cost Recovery Fund.

25455. On and after January 1, 2006, the board may annually adjust the registration fees and sales fee imposed by this article, after providing notice and opportunity for public comment, in a manner necessary and appropriate to ensure viability of the fund and in furtherance of the purposes of this chapter. The board shall not increase the amount of the fees imposed on an abandoned dry cleaning facility in an amount greater than fees imposed on the largest PCE use facility.

25456. On and after January 1, 2005, no person shall sell or transfer any dry cleaning solvent to any person owning or

1 operating a dry cleaning facility unless the owner or operator of the
2 dry cleaning facility has conspicuously posted a copy of a valid
3 certificate evidencing registration of the dry cleaning facility
4 pursuant to this chapter at the facility.

6 Article 5. Liability and Claims

8 25460. (a) An owner or operator of a ~~PCE-use~~ *dry cleaning*
9 *facility or abandoned dry cleaning* facility or wholesale
10 distribution facility from which there is a release or a threatened
11 release of PCE is liable for the full and total costs of any required
12 corrective action or replacement costs with regard to that release,
13 or any corrective action order, directive, notification or approval
14 order issued pursuant to Division 7 (commencing with Section
15 13000) of the Water Code with regard to that release.

16 ~~(b) The board may recover the costs specified in subdivision (a)~~
17 ~~from the owner or operator in a civil action.~~

18 ~~(e) Except as provided in subdivisions (c) and (d), this section~~
19 ~~does not deprive a party of any defense the party may have under~~
20 ~~any other provision of law.~~

21 ~~(d) The standard of liability for any costs of corrective action~~
22 ~~recoverable pursuant to this chapter is strict liability.~~

23 ~~(e)–~~

24 (b) No indemnification, hold harmless, conveyance, or similar
25 agreement is effective to preclude any liability for costs
26 recoverable under this article.

27 ~~(f)–~~

28 (c) The entry of judgment against any party to the action does
29 not bar any future action by the fund against any person who is later
30 discovered to be potentially liable for costs paid from the fund.

31 ~~(g) Payment of any claim by the fund pursuant to this chapter~~
32 ~~is subject to the state acquiring by subrogation the rights of the~~
33 ~~claimant to recover those costs of corrective action for which it has~~
34 ~~compensated the claimant from the person responsible or liable for~~
35 ~~the PCE release.~~

36 ~~(h) Except as provided in this section, this chapter does not~~

37 (d) *This chapter does not* affect or modify the obligations or
38 liability of any person under any other provision of state or federal
39 law, including common law, ~~for damages, injury, or loss resulting~~

1 ~~from a release or for a corrective action, or for the costs of a~~
2 ~~corrective action.~~

3 25465. (a) A potentially eligible party may file a claim with
4 the board for reimbursement for both of the following:

5 (1) Reimbursement of necessary corrective action costs
6 incurred by the potentially eligible party with regard to a PCE
7 release *at a dry cleaning facility or abandoned dry cleaning facility*
8 that are required by the regional board or local agency to protect
9 water resources and public health and safety.

10 (2) Any water supply replacement costs incurred by the
11 potentially eligible party with regard to a PCE release that are
12 required by a California regional water quality control board.

13 (b) A potentially eligible party shall include, in the application
14 for a claim, evidence of payment of any applicable fee required
15 under this chapter. If the potentially eligible party is the current or
16 prior owner or operator of an abandoned dry cleaning facility, the
17 party shall provide evidence that party has elected to register and
18 pay the fee pursuant to subdivision (b) of Section 25451. The
19 board shall review and accept or deny the request for an
20 application for a claim pursuant to the regulations adopted
21 pursuant to Section 25466. The board may reject any claim
22 application and deny eligibility if the board determines that the
23 applicant is in willful noncompliance with this chapter or the
24 regulations adopted pursuant to this chapter or if continued
25 corrective action and incurred costs are not in the interest or
26 maximum benefit to the people of the state.

27 (c) The board shall adopt a priority-ranking list at least
28 annually for awarding claims pursuant to this article. The board
29 shall review any claims for high priority sites and shall first expend
30 funds necessary for corrective action with regard to those sites
31 with money available from the fund.

32 (d) The board shall, upon approval of the application, inform
33 the claimant of the priority ranking of the claim.

34 25466. (a) The board shall adopt regulations to implement
35 this chapter that place a minimum cost burden on the parties,
36 including regulations that do all of the following:

37 (1) Establish a process for submitting claim applications to the
38 board, including forms for applications, methods for determining
39 eligibility for the issuance of a claim, and a process for appealing
40 the board's decisions.

1 (2) Provide standards for prioritizing claims, considering the
2 degree of risk to human health and the environment and other
3 factors that the board may deem appropriate, *including, but not*
4 *limited to, the financial condition of the potentially eligible party.*

5 (b) The Office of Administrative Law shall deem the adoption
6 of any regulations pursuant to this section that are filed with the
7 Office of Administrative Law on or before January 1, 2005, to be
8 an emergency necessary for the immediate preservation of the
9 public peace, health, safety, and general welfare for purposes of
10 Section 11349.6 of the Government Code. Notwithstanding
11 Chapter 3.5 (commencing with Section 11340) of Part 1 of
12 Division 3 of Title 2 of the Government Code, including
13 subdivision (e) of Section 11346.1 of the Government Code, any
14 emergency regulation adopted by the board pursuant to this
15 subdivision shall not be repealed by the Office of Administrative
16 Law, and shall remain in effect until revised by the board.

